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|--------------------|---|----------------------------|
| ROBERT FOSTER      | § |                            |
| v.                 | § | CIVIL ACTION NO. 2:08cv162 |
| DIRECTOR, TDCJ-CID | § |                            |

## 1

Foster received a copy of the Magistrate Judge's Report on June 25, 2008, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Magistrate Judge's Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is DISMISSED without prejudice, with refiling conditioned upon Foster's receiving permission from the Fifth Circuit Court of Appeals to file a successive petition. He may not refile this petition, or any other habeas corpus application challenging the conviction at issue in this case, until he obtains permission from the Fifth Circuit to file a successive petition. It is further

ORDERED that the Petitioner Robert Foster is hereby DENIED a certificate of appealability *sua sponte*. The denial of the certificate of appealability refers solely to an appeal of the decision in this case and shall have no effect upon Foster's right to seek permission from the Fifth Circuit Court of Appeals to file a second or successive petition. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

**SIGNED this 9th day of February, 2009.**



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DAVID FOLSOM  
UNITED STATES DISTRICT JUDGE